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MORRISON & FOERSTER LLP
425 MARKET STREET
SAN FRANCISCO, CA 94105-2482

EXAMINER	
ANDERSON, MATTHEW D	
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BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Application Number: 09/588,242
Filing Date: June 06, 2000
Appellant(s): POSTON, LLOYD ALAN

Peter J. Yim
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 5/23/05.

(1) Real Party in Interest

A statement identifying the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

(3) Status of Claims

The statement of the status of the claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Invention

The summary of invention contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is substantially correct. The changes are as follows:

WITHDRAWN REJECTIONS

The following grounds of rejection are not presented for review on appeal because they have been withdrawn by the examiner. the rejections to claims 9-10, 12-20, and 33-38 have been withdrawn.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

The following is a listing of the evidence (e.g., patents, publications, Official Notice, and admitted prior art) relied upon in the rejection of claims under appeal.

US 6,170,063	Golding	1-2001
US 5,819,020	Beeler	10-1998

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1, 3, 5-8, 21-23, 25, and 27-32 are rejected under 35 U.S.C. 102(e) as being anticipated by Golding (US Patent # 6,180,063).

With respect to claim 1, Golding discloses:

a backup system with an input for receiving mass storage commands comprising data and an address at which data is to written, as shown by the write messages (53 and 55) in figure 1 containing region addresses and data, and as recited in column 2, lines 48-53;

a source of time information, by teaching in column 3, lines 45-55, as shown by a timestamp, and in column 4, line 54 of a local clock;

a circuit for associating a write command with the time information to create a log entry, by teaching in column 4, lines 53-55, that the processor sends the update message to the disk to obtain a timestamp from its local clock, also in column 5, lines 10-15, which recites that each disk receiving a message compares the message timestamp *to the disk's local clock* to determine if the message was sent within a reasonable time frame;

a storage for accepting, at a log assisted disk, log entries from the circuit, wherein the circuit queues log entries and periodically sends/writes one or more queued entries to the storage/log file, as shown in the disk (20 or 30) in figure 1.

With respect to claims 3 and 27, Golding discloses:

a network connection for accepting entries, by teaching in column 1, lines 13-15, multiple computers connected via a network;

a server for accepting log entries from the network and for providing the log entries to a log file, by teaching in column 1, line 23, of using a network server to recover from faults.

With respect to claim 5, Golding discloses that the mass storage address comprises a sector address, as recited in column 3, lines 28-29.

With respect to claims 6-7 and 28, Golding discloses that the storage for accepting log entries is the mass storage, with the mass storage being a hard disk, as shown by the disk 20 in figure 1.

With respect to claims 8 and 29-30, Golding discloses the storage for accepting log entries to be a non-volatile RAM based virtual disk, as recited in column 7, line 43, and column 8,line 45.

With respect to claim 21, Golding discloses:

a backup system for enabling continuous backup of computer data stored at a computer to a mass storage system, by discussing in column 7, lines 10-20 of having two copies of the disk data;

an operating system for receiving write commands from an application installed on the computer and for converting each received write command into a sector write having a sector address and sector data, by teaching in the abstract that the controller receives write messages from processors coupled to the controller. Each write message includes a data segment to be

written to the storage medium at a specified address, and coordination information specifying a timestamp, and the addresses of other data records on other storage systems that were written in same write operation;

a source of time information, as recited in column 4, lines 53-55;

a log-assisted disk for processing sector writes sent to the log-assisted disk by the operating system, said processing including receiving the sector writes, accumulating/queuing the sector writes, and associating each sector write with the time information, thereby creating a log entry, by teaching in figure 1 and column 4, lines 53-67, the a write process bearing a timestamp is stored in the log;

means for communicating the log entry to the storage, wherein the operating system, the source of the time information, the log-assisted disk, and the communicating means are in electrical communication with each other within a computer, as shown by the communication network connections in figure 1.

With respect to claim 22, Golding discloses the storage for accepting log entries being located within the computer, as shown in figure 1.

With respect to claim 23, Golding discloses the storage for accepting log entries is in network communication with the computer, as shown by the communication network connections in figure 1.

With respect to claim 25, Golding discloses the storage for accepting log entries receives log entries from multiple computers in a network, as recited in column 1, lines 13-15

With respect to claims 31-32, Golding discloses the mass storage is a nonvolatile hard disk, as shown by the disk 20 in figure 1.

Claims 4 and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Golding. The difference between Golding and the claims is the claims recite the network being the Internet. However, the specific use of a network such as the Internet instead of a local network, does not have a disclosed purpose nor are disclosed to overcome any deficiencies in the prior art. As such, the network may have been embodied in a number of manners, such as an LAN or WAN. Accordingly, it would have been an obvious matter to one skilled in the art to utilize the backup log system of Golding in an Internet network in order to provide a wide ranging network, since applicant has not disclosed that a wide area network, as opposed to other networks, overcomes a deficiency in the prior art or is for any stated purpose.

Claim 24 is rejected under 35 U.S.C. 103(a) as being unpatentable over Golding and Beeler, Jr. (US Patent # 5,819,020).

Golding teaches all other limitations of the parent claims, but fails to specifically disclose the communication means being a network interface card. Beeler, Jr. teaches in figure 2 of a network interface card used in the logged backup system, as shown in figure 17.

It would have been obvious to one of ordinary skill in the art, having the teachings of Golding and Beeler, Jr. before him at the time the invention was made, to modify the logged backup system taught by Golding, to include a network interface card, as with the logged backup system of Beeler, Jr., to introduce the capability to mirror transactions across a network, as taught by Beeler, Jr. in column 2, lines 30-35.

(10) Response to Argument

The arguments for independent claims 1 and 21 appear to lie within a single limitation in each claim, namely:

[Claim 1]: "a circuit for associating a mass storage write command with the time information to create a log entry;"

[Claim 21]: "...associating each sector write with the time information to create a log entry..."

First, Applicant asserts in page 7 of the brief that because the write messages generated by the processor 11 in Golding already include timestamps before the write messages are received by controllers 22 and 32, that such does not anticipate the claim language.

Applicant further asserts that since Golding only discloses placing a write message in a log after testing the timestamp against a local clock and does not explicitly disclose any additional processing or modification after said testing, that such would not read upon the claimed "associating" to "create a log entry".

Applicant's first arguments appear to rely on the write commands and time information being separate in order to be "associated". The problem is that the claims are not so limited. There is absolutely nothing specific in the claim language requiring the time information and command to be received separately. The disagreement appears to be in the meaning of the term "associating". The Applicant appears to argue that Golding's controller does not "associate" a write command with time information because the time stamp is not received separately from the rest of the write message. An analysis of such is as follows:

With respect to claims 1 and 21, the Fourth Edition of The American Heritage Dictionary defines "associate" as "to join in or form a league, union, or association. See synonyms at 'join'". Such language seems extremely broad, so we are led to the definition of "join", which is "to participate with in an act or activity". Based on such definitions of the broad claim terminology, the message and timestamp of Golding, when compared to a local clock and placed in a log, could very reasonably be considered to be "participating with in an act or activity". As such, the rejections of claims 1 and 21 appear proper because the timestamp and message data are "associated" (or participating with each other in an act or activity) at the controller.

Alternatively, with regard to the Applicant's second argument that since Golding only discloses placing a write message in a log after testing the timestamp against a local clock, and does not explicitly disclose any additional processing or modification after said testing, that such would not read upon the claimed "associating [...] to [...] create a log entry". Couldn't this testing against a local clock, though, be reasonably considered some sort of additional processing that "associates" the write message with some sort of "time information" (either the timestamp or the local clock) to create a log entry (by placing messages which pass the test into the log)? Such local clock is most definitely a separate time information, and would seem to resolve the Applicant's apparent arguments that the timestamp and message of Golding cannot be "associated" unless they are separate.

Assuming *arguendo* that the controller of Golding does not "associate" the original timestamp and original message and does not "associate" the message with the local clock, why could the processor 11 not be the "circuit for associating"? Unlike the other independent claims, claims 1 and 21 do not contain the limitation wherein the associating is performed "at the log assisted disk". If the Applicant's main argument against the controller of Golding being the claimed circuit is that the timestamp and message are already combined and not separate, then surely the processor that takes the data message and timestamp information to form these write messages would be "associating" them.

Applicant then attempts to argue against any inherency in the Golding reference. The Examiner arguments though were merely attempting to illustrate the expanse of interpretations available under such broad claim terminology as "associating". As described above, the broad claim language breeds many possible interpretations, and absent narrowing amendments,

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Matthew D. Anderson
Primary Examiner
Art Unit 2186

August 5, 2005

Conferees

MATTHEW KIM
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2100

EDDIE CHAN
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2100

MORRISON & FOERSTER LLP
425 MARKET STREET
SAN FRANCISCO, CA 94105-2482